

AMENDED IN ASSEMBLY AUGUST 7, 2006

AMENDED IN ASSEMBLY JUNE 21, 2006

AMENDED IN SENATE MAY 2, 2006

AMENDED IN SENATE APRIL 6, 2006

SENATE BILL

No. 1733

Introduced by Senator Aanestad

February 24, 2006

An act to amend ~~Sections 13385 and 13385.1~~ *Section 13385* of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 1733, as amended, Aanestad. Water quality: civil penalties.

Existing law, the Porter-Cologne Water Quality Control Act, imposes civil penalties for certain violations of the act relating to waste discharge requirements, ~~including a mandatory minimum penalty of \$3,000 for serious violations, as defined, and for specified acts that are repeated 4 or more times in any period of 6 consecutive months, except as specified, including violations of an effluent limitation. The act also defines "serious violation" to include a failure to file a discharge monitoring report.~~ The act authorizes the ~~state board~~ *State Water Resources Control Board* or a *California* regional *water quality control* board, in lieu of assessing specified mandatory minimum penalties against a publicly owned treatment works (POTW) serving a small community, as defined, to elect to require the POTW to spend an equivalent amount towards the completion of a compliance project if the state board or a regional board makes a specified determination.

~~This bill would modify the repeated violation provision to apply to a period of 6 calendar months. With regard to the discharge monitoring report provision, the bill would require a \$3,000 penalty to be assessed if the report is not submitted within 30 days following the deadline, as prescribed, and would require an additional penalty of \$3,000 for each complete period of 30 days following the date of receipt of notice from the regional board that the report has not been submitted as required.~~

~~The~~

This bill would revise requirements relating to the determination that the state board or a regional board is required to make before electing to require a POTW serving a small community to spend funds toward the completion of a compliance project, in lieu of imposing mandatory minimum penalties. The bill would revise the definition of “small community” for the purposes of that provision.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 13385 of the Water Code is amended to
- 2 read:
- 3 13385. (a) Any person who violates any of the following
- 4 shall be liable civilly in accordance with this section:
- 5 (1) Section 13375 or 13376.
- 6 (2) Any waste discharge requirements or dredged or fill
- 7 material permit issued pursuant to this chapter or any water
- 8 quality certification issued pursuant to Section 13160.
- 9 (3) Any requirements established pursuant to Section 13383.
- 10 (4) Any order or prohibition issued pursuant to Section 13243
- 11 or Article 1 (commencing with Section 13300) of Chapter 5, if
- 12 the activity subject to the order or prohibition is subject to
- 13 regulation under this chapter.
- 14 (5) Any requirements of Section 301, 302, 306, 307, 308, 318,
- 15 401, or 405 of the Clean Water Act, as amended.
- 16 (6) Any requirement imposed in a pretreatment program
- 17 approved pursuant to waste discharge requirements issued under
- 18 Section 13377 or approved pursuant to a permit issued by the
- 19 administrator.

(b) Civil liability may be imposed by the superior court in an amount not to exceed the sum of both of the following:

(1) Twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed twenty-five dollars (\$25) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose the liability.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(d) For purposes of subdivisions (b) and (c), the term “discharge” includes any discharge to navigable waters of the United States, any introduction of pollutants into a publicly owned treatment works, or any use or disposal of sewage sludge.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be

1 assessed at a level that recovers the economic benefits, if any,
2 derived from the acts that constitute the violation.

3 (f) (1) Except as provided in paragraph (2), for the purposes
4 of this section, a single operational upset that leads to
5 simultaneous violations of more than one pollutant parameter
6 shall be treated as a single violation.

7 (2) (A) For the purposes of subdivisions (h) and (i), a single
8 operational upset in a wastewater treatment unit that treats
9 wastewater using a biological treatment process shall be treated
10 as a single violation, even if the operational upset results in
11 violations of more than one effluent limitation and the violations
12 continue for a period of more than one day, if all of the following
13 apply:

14 (i) The discharger demonstrates all of the following:

15 (I) The upset was not caused by wastewater treatment operator
16 error and was not due to discharger negligence.

17 (II) But for the operational upset of the biological treatment
18 process, the violations would not have occurred nor would they
19 have continued for more than one day.

20 (III) The discharger carried out all reasonable and immediately
21 feasible actions to reduce noncompliance with the applicable
22 effluent limitations.

23 (ii) The discharger is implementing an approved pretreatment
24 program, if so required by federal or state law.

25 (B) Subparagraph (A) only applies to violations that occur
26 during a period for which the regional board has determined that
27 violations are unavoidable, but in no case may that period exceed
28 30 days.

29 (g) Remedies under this section are in addition to, and do not
30 supersede or limit, any other remedies, civil or criminal, except
31 that no liability shall be recoverable under Section 13261, 13265,
32 13268, or 13350 for violations for which liability is recovered
33 under this section.

34 (h) (1) Notwithstanding any other provision of this division,
35 and except as provided in subdivisions (j), (k), and (l), a
36 mandatory minimum penalty of three thousand dollars (\$3,000)
37 shall be assessed for each serious violation.

38 (2) For the purposes of this section, a “serious violation”
39 means any waste discharge that violates the effluent limitations
40 contained in the applicable waste discharge requirements for a

Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

(i) *(I)* Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and *(l)*, a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six ~~calendar~~ *consecutive* months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- ~~(1)~~
- (A) Violates a waste discharge requirement effluent limitation.
- ~~(2)~~
- (B) Fails to file a report pursuant to Section 13260.
- ~~(3)~~
- (C) Files an incomplete report pursuant to Section 13260.
- ~~(4)~~
- (D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

(2) For the purposes of this section, a “period of six consecutive months” means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.

(j) Subdivisions (h) and (i) do not apply to any of the following:

(1) A violation caused by one or any combination of the following:

- (A) An act of war.
- (B) An unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.
- (C) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(D) (i) The operation of a new or reconstructed wastewater treatment unit during a defined period of adjusting or testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit, if all of the following requirements are met:

(I) The discharger has submitted to the regional board, at least 30 days in advance of the operation, an operations plan that describes the actions the discharger will take during the period of adjusting and testing, including steps to prevent violations and identifies the shortest reasonable time required for the period of adjusting and testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit.

(II) The regional board has not objected in writing to the operations plan.

(III) The discharger demonstrates that the violations resulted from the operation of the new or reconstructed wastewater treatment unit and that the violations could not have reasonably been avoided.

(IV) The discharger demonstrates compliance with the operations plan.

(V) In the case of a reconstructed wastewater treatment unit, the unit relies on a biological treatment process that is required to be out of operation for at least 14 days in order to perform the reconstruction, or the unit is required to be out of operation for at least 14 days and, at the time of the reconstruction, the cost of reconstructing the unit exceeds 50 percent of the cost of replacing the wastewater treatment unit.

(ii) For the purposes of this section, “wastewater treatment unit” means a component of a wastewater treatment plant that performs a designated treatment function.

(2) (A) Except as provided in subparagraph (B), a violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all of the following requirements are met:

(i) The cease and desist order or time schedule order is issued after January 1, 1995, but not later than July 1, 2000, specifies the actions that the discharger is required to take in order to

1 correct the violations that would otherwise be subject to
2 subdivisions (h) and (i), and the date by which compliance is
3 required to be achieved and, if the final date by which
4 compliance is required to be achieved is later than one year from
5 the effective date of the cease and desist order or time schedule
6 order, specifies the interim requirements by which progress
7 towards compliance will be measured and the date by which the
8 discharger will be in compliance with each interim requirement.

9 (ii) The discharger has prepared and is implementing in a
10 timely and proper manner, or is required by the regional board to
11 prepare and implement, a pollution prevention plan that meets
12 the requirements of Section 13263.3.

13 (iii) The discharger demonstrates that it has carried out all
14 reasonable and immediately feasible actions to reduce
15 noncompliance with the waste discharge requirements applicable
16 to the waste discharge and the executive officer of the regional
17 board concurs with the demonstration.

18 (B) Subdivisions (h) and (i) shall become applicable to a waste
19 discharge on the date the waste discharge requirements
20 applicable to the waste discharge are revised and reissued
21 pursuant to Section 13380, unless the regional board does all of
22 the following on or before that date:

23 (i) Modifies the requirements of the cease and desist order or
24 time schedule order as may be necessary to make it fully
25 consistent with the reissued waste discharge requirements.

26 (ii) Establishes in the modified cease and desist order or time
27 schedule order a date by which full compliance with the reissued
28 waste discharge requirements shall be achieved. For the purposes
29 of this subdivision, the regional board may not establish this date
30 later than five years from the date the waste discharge
31 requirements were required to be reviewed pursuant to Section
32 13380. If the reissued waste discharge requirements do not add
33 new effluent limitations or do not include effluent limitations that
34 are more stringent than those in the original waste discharge
35 requirements, the date shall be the same as the final date for
36 compliance in the original cease and desist order or time
37 schedule order or five years from the date that the waste
38 discharge requirements were required to be reviewed pursuant to
39 Section 13380, whichever is earlier.

(iii) Determines that the pollution prevention plan required by clause (ii) of subparagraph (A) is in compliance with the requirements of Section 13263.3 and that the discharger is implementing the pollution prevention plan in a timely and proper manner.

(3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or Section 13308, if all of the following requirements are met:

(A) The cease and desist order or time schedule order is issued on or after July 1, 2000, and specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i).

(B) The regional board finds that, for one of the following reasons, the discharger is not able to consistently comply with one or more of the effluent limitations established in the waste discharge requirements applicable to the waste discharge:

(i) The effluent limitation is a new, more stringent, or modified regulatory requirement that has become applicable to the waste discharge after the effective date of the waste discharge requirements and after July 1, 2000, new or modified control measures are necessary in order to comply with the effluent limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(ii) New methods for detecting or measuring a pollutant in the waste discharge demonstrate that new or modified control measures are necessary in order to comply with the effluent limitation and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(iii) Unanticipated changes in the quality of the municipal or industrial water supply available to the discharger are the cause of unavoidable changes in the composition of the waste discharge, the changes in the composition of the waste discharge are the cause of the inability to comply with the effluent limitation, no alternative water supply is reasonably available to the discharger, and new or modified measures to control the

1 composition of the waste discharge cannot be designed, installed,
2 and put into operation within 30 calendar days.

3 (iv) The discharger is a publicly owned treatment works
4 located in Orange County that is unable to meet effluent
5 limitations for biological oxygen demand, suspended solids, or
6 both, because the publicly owned treatment works meets all of
7 the following criteria:

8 (I) Was previously operating under modified secondary
9 treatment requirements pursuant to Section 301(h) of the Clean
10 Water Act (33 U.S.C. Sec. 1311(h)).

11 (II) Did vote on July 17, 2002, not to apply for a renewal of
12 the modified secondary treatment requirements.

13 (III) Is in the process of upgrading its treatment facilities to
14 meet the secondary treatment standards required by Section
15 301(b)(1)(B) of the Clean Water Act (33 U.S.C. Sec.
16 1311(b)(1)(B)).

17 (C) The regional board establishes a time schedule for
18 bringing the waste discharge into compliance with the effluent
19 limitation that is as short as possible, taking into account the
20 technological, operational, and economic factors that affect the
21 design, development, and implementation of the control
22 measures that are necessary to comply with the effluent
23 limitation. For the purposes of this subdivision, the time schedule
24 may not exceed five years in length, except that the time
25 schedule may not exceed 10 years in length for the upgrade
26 described in subparagraph (B)(iv)(III). If the time schedule
27 exceeds one year from the effective date of the order, the
28 schedule shall include interim requirements and the dates for
29 their achievement. The interim requirements shall include both of
30 the following:

31 (i) Effluent limitations for the pollutant or pollutants of
32 concern.

33 (ii) Actions and milestones leading to compliance with the
34 effluent limitation.

35 (D) The discharger has prepared and is implementing in a
36 timely and proper manner, or is required by the regional board to
37 prepare and implement, a pollution prevention plan pursuant to
38 Section 13263.3.

39 (k) (1) In lieu of assessing all or a portion of the mandatory
40 minimum penalties pursuant to subdivisions (h) and (i) against a

1 publicly owned treatment works serving a small community, the
2 state board or the regional board may elect to require the publicly
3 owned treatment works to spend an equivalent amount towards
4 the completion of a compliance project proposed by the publicly
5 owned treatment works, if the state board or the regional board
6 finds ~~both~~ *all* of the following:

7 (A) The compliance project is designed to correct the
8 violations within five years.

9 (B) *The compliance project is in accordance with the*
10 *enforcement policy of the state board, excluding any provision in*
11 *the policy that is inconsistent with this section.*

12 ~~(B)~~

13 (C) The publicly owned treatment works has prepared a
14 financing plan to complete the compliance project.

15 (2) For the purposes of this subdivision, “small community”
16 ~~means an incorporated or unincorporated community with a~~
17 ~~population of 10,000 persons or less, a rural county, or a~~
18 ~~reasonably isolated and divisible segment of a larger community~~
19 ~~where the population of the segment is 10,000 persons or less,~~
20 ~~with a financial hardship as determined by the state board after~~
21 ~~considering such factors as median income in the community and~~
22 ~~the area surrounding the community, rate of unemployment, low~~
23 ~~population density, or existing and projected utility rates. means~~
24 ~~a publicly owned treatment works serving a population of 10,000~~
25 ~~persons or less or a rural county, with a financial hardship as~~
26 ~~determined by the state board after considering such factors as~~
27 ~~median income of the residents, rate of unemployment, or low~~
28 ~~population density in the service area of the publicly owned~~
29 ~~treatment works.~~

30 (l) (1) In lieu of assessing penalties pursuant to subdivision
31 (h) or (i), the state board or the regional board, with the
32 concurrence of the discharger, may direct a portion of the penalty
33 amount to be expended on a supplemental environmental project
34 in accordance with the enforcement policy of the state board. If
35 the penalty amount exceeds fifteen thousand dollars (\$15,000),
36 the portion of the penalty amount that may be directed to be
37 expended on a supplemental environmental project may not
38 exceed fifteen thousand dollars (\$15,000) plus 50 percent of the
39 penalty amount that exceeds fifteen thousand dollars (\$15,000).

1 (2) For the purposes of this section, a “supplemental
2 environmental project” means an environmentally beneficial
3 project that a person agrees to undertake, with the approval of the
4 regional board, that would not be undertaken in the absence of an
5 enforcement action under this section.

6 (3) This subdivision applies to the imposition of penalties
7 pursuant to subdivision (h) or (i) on or after January 1, 2003,
8 without regard to the date on which the violation occurs.

9 (m) The Attorney General, upon request of a regional board or
10 the state board, shall petition the appropriate court to collect any
11 liability or penalty imposed pursuant to this section. Any person
12 who fails to pay on a timely basis any liability or penalty
13 imposed under this section shall be required to pay, in addition to
14 that liability or penalty, interest, attorneys’ fees, costs for
15 collection proceedings, and a quarterly nonpayment penalty for
16 each quarter during which the failure to pay persists. The
17 nonpayment penalty shall be in an amount equal to 20 percent of
18 the aggregate amount of the person’s penalty and nonpayment
19 penalties that are unpaid as of the beginning of the quarter.

20 (n) (1) Subject to paragraph (2), funds collected pursuant to
21 this section shall be deposited in the State Water Pollution
22 Cleanup and Abatement Account.

23 (2) (A) Notwithstanding any other provision of law, moneys
24 collected for a violation of a water quality certification in
25 accordance with paragraph (2) of subdivision (a) or for a
26 violation of Section 401 of the Clean Water Act (33 U.S.C. Sec.
27 1341) in accordance with paragraph (5) of subdivision (a) shall
28 be deposited in the Waste Discharge Permit Fund and separately
29 accounted for in that fund.

30 (B) The funds described in subparagraph (A) shall be
31 expended by the state board, upon appropriation by the
32 Legislature, to assist regional boards, and other public agencies
33 with authority to clean up waste or abate the effects of the waste,
34 in cleaning up or abating the effects of the waste on waters of the
35 state or for the purposes authorized in Section 13443.

36 (o) The state board shall continuously report and update
37 information on its Internet Web site, but at a minimum, annually
38 on or before January 1, regarding its enforcement activities. The
39 information shall include all of the following:

1 (1) A compilation of the number of violations of waste
2 discharge requirements in the previous calendar year, including
3 stormwater enforcement violations.

4 (2) A record of the formal and informal compliance and
5 enforcement actions taken for each violation, including
6 stormwater enforcement actions.

7 (3) An analysis of the effectiveness of current enforcement
8 policies, including mandatory minimum penalties.

9 (p) The amendments made to subdivisions (f), (h), (i) and (j)
10 during the second year of the 2001–02 Regular Session apply
11 only to violations that occur on or after January 1, 2003.

12 ~~SEC. 2. Section 13385.1 of the Water Code is amended to~~
13 ~~read:~~

14 ~~13385.1. (a) (1) For the purposes of subdivision (h) of~~
15 ~~Section 13385, a “serious violation” also means a failure to file a~~
16 ~~discharge monitoring report required pursuant to Section 13383.~~
17 ~~A penalty of three thousand dollars (\$3,000) shall be assessed if~~
18 ~~the report is not submitted within 30 days following the deadline~~
19 ~~for submitting the report, if the report is designed to ensure~~
20 ~~compliance with limitations contained in waste discharge~~
21 ~~requirements that contain effluent limitations. An additional~~
22 ~~penalty of three thousand dollars (\$3,000) shall be assessed for~~
23 ~~each complete period of 30 days following the date of receipt of~~
24 ~~notice from the regional board that the report has not been~~
25 ~~submitted as required.~~

26 ~~(2) Paragraph (1) applies only to violations that occur on or~~
27 ~~after January 1, 2004.~~

28 ~~(b) (1) Notwithstanding any other provision of law, moneys~~
29 ~~collected pursuant to this section for a failure to timely file a~~
30 ~~report, as described in subdivision (a), shall be deposited in the~~
31 ~~Waste Discharge Permit Fund and separately accounted for in~~
32 ~~that fund.~~

33 ~~(2) The funds described in paragraph (1) shall be expended by~~
34 ~~the state board, upon appropriation by the Legislature, to assist~~
35 ~~regional boards, and other public agencies with authority to clean~~
36 ~~up waste or abate the effects of the waste, in responding to~~
37 ~~significant water pollution problems.~~

38 ~~(c) For the purposes of this section, paragraph (2) of~~
39 ~~subdivision (f) of Section 13385, and subdivisions (h), (i), and (j)~~
40 ~~of Section 13385 only, “effluent limitation” means a numeric or~~

1 ~~numerically expressed narrative restriction, on the quantity,~~
2 ~~discharge rate, concentration, or toxicity units of a pollutant or~~
3 ~~pollutants that may be discharged from an authorized location.~~
4 ~~An effluent limitation may be final or interim, and may be~~
5 ~~expressed as a prohibition. An effluent limitation, for those~~
6 ~~purposes, does not include a receiving water limitation, a~~
7 ~~compliance schedule, or a best management practice.~~

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